United States Department of Labor
Employees' Compensation Appeals Board

R.L., Appellant	)	
and	)	**Docket No. 10-410**
	)	**Issued: August 11, 2010**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Jackson, MS, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 30, 2009 appellant filed a timely appeal from the November 10, 2009 merit decision of the Office of Workers' Compensation Programs which terminated his compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation benefits effective November 10, 2009 on the grounds that he had no residuals of his June 14, 2007 employment injury after that date.

FACTUAL HISTORY

The Office accepted that on June 14, 2007 appellant, then a 44-year-old mail clerk, sustained a left ankle sprain when it gave way while walking and delivering mail.[1] Appellant stopped work shortly after his injury. In September 2007 he returned to work in a light-duty position which limited his walking and standing.[2] He stopped work for various periods thereafter and received wage-loss compensation for periods of disability.

In an August 27, 2007 report, Dr. Walter R. Shelton, an attending Board-certified orthopedic surgeon, evaluated appellant for the first time. He stated that appellant reported that his left ankle still hurt and noted that he was placed in a boot walker. On physical examination appellant exhibited an obvious valgus left hindfoot with no clinical instability or loss of range of motion. He was exquisitely tender over the tip of the fibula and personal tendons. Three view x-rays of the left ankle were normal and Dr. Shelton diagnosed valgus hindfoot with loss of arch of the left foot.

In a September 12, 2007 report, Dr. Willie J. Lewis, an attending podiatrist, stated that appellant continued to experience left ankle pain. On examination he exhibited decreased left ankle motion and left ankle pain on palpation. Dr. Lewis diagnosed chronic left ankle sprain and pes planus on pronation and recommended that appellant be fitted with semirigid orthodox shoes. The findings of a November 1, 2007 magnetic resonance imaging (MRI) scan of appellant's left ankle showed no personal tendon pathology, but did show a possible tear of the anterior talofibular ligament.

In a November 5, 2007 report, Dr. Shelton stated that testing and physical examination of appellant's left anterior talofibular ligament was normal. He had a left valgus foot with loss of his arch and impingement of his peroneal tendons. Dr. Shelton recommended that appellant continue with an exercise program. On December 19, 2007 he advised that appellant was treated conservatively with exercise and orthotic shoes and noted that MRI scan testing showed no further pathology in his left ankle. Dr. Shelton stated:

> "His objective findings are a valgus foot when he stands. He does not have an ankle sprain. This is really not a work injury, but rather a developmental flatfoot with valgus hindfoot that causes impingement of the fibula on the talus and os calcis and peroneal tendon."

In early January 2008, appellant returned to work as a modified mail clerk with restrictions on walking and standing. On January 21, 2008 Dr. Shelton stated that appellant's left ankle sprain had aggravated his personal impingement problem, but did not cause it. The problem was more related to a chronic deterioration in the arch of his left foot with a valgus hindfoot. On October 23, 2008 the Office requested that Dr. Shelton answer certain questions,

[1] Appellant initially indicated that the injury occurred on June 26, 2007 but the injury actually occurred on June 14, 2007.

[2] The record makes reference to an incident in 2005 when appellant's left ankle gave way while he was lifting boxes at work. It is unclear whether this resulted in an accepted work injury.

including whether appellant still had residuals of his June 14, 2007 left ankle sprain. Dr. Shelton did not respond to this request.

In a March 18, 2009 report, Dr. David C. Collipp, a Board-certified physical medicine and rehabilitation physician, stated that he was evaluating appellant for the first time. He indicated that appellant reported breaking his left ankle while in the military in 1983. Dr. Collipp noted that he sustained a left ankle injury in 2007 when he was walking down the hall at work.[3] Appellant reported left foot symptoms including numbness and tingling in the foot, particularly in the heel and pain that was aggravated by walking and standing. Dr. Collipp advised that appellant had congenital flat feet which compromised his left ankle even further. On examination his cranial nerves were grossly intact and motor power in the lower extremities was intact without focal neurologic deficits, including upon bilateral hip flexion, abduction and adduction, knee flexion and extension, ankle dorsiflexion and plantar flexion and great toe extension. Dr. Collipp found normal tone in appellant's lower extremities without atrophy or wasting. Appellant's gait was grossly normal and his ankle ranges of motion were relatively symmetrical, lacking about three degrees of eversion on the left compared to the right, but similar for dorsiflexion and plantar flexion. His left ankle joint was tender to palpation without significant swelling and his skin was without change. Dr. Collipp diagnosed chronic sprain of the left ankle and indicated that he had no neurologic change. He stated that appellant was at maximum medical improvement and recommended that he undergo a functional capacity evaluation.

In June 2009, the Office referred appellant to Dr. Thomas Jeffcoat, a Board-certified orthopedic surgeon, for further evaluation of his left ankle condition. On June 18, 2009 Dr. Jeffcoat noted that appellant reported sustaining a foot fracture in 1983 while in the military and an on-the-job injury in 2005 while working for the employing establishment. He described the June 14, 2007 injury that appellant sustained when he was delivering mail at work. Dr. Jeffcoat advised that appellant's feet were extremely flat and that he had a valgus left hindfoot. On examination appellant was able to touch his toes easily, straight leg raising caused some pain in his right calf and femoral stretching was normal bilaterally. When lying in the prone position and flexing his left knee without touching his left foot and ankle he complained of left ankle pain. Motor function and range of motion appeared normal in both the upper and lower extremities. Appellant had no calf atrophy and he walked in a very short and shuffling gait, which was felt to be secondary to decreased effort. Dr. Jeffcoat stated that examination of appellant's left ankle revealed normal range of motion with about 15 degrees of dorsal flexion and about 60 degrees of plantar flexion bilaterally. Appellant had very supple feet bilaterally and they did not appear to give way at all. Stress x-rays of his left ankle showed no movement on stretching the ankle and, therefore, revealed a very stable ankle.

Dr. Jeffcoat found that appellant had very severe flat feet and posited that his flat feet and valgus left hindfoot were the cause of his instability. He saw no evidence of any ankle injury on the x-ray or examination and stated that the cause of appellant's feet problems, which were congenital, had noting to do with any type of injury he sustained. It was a permanent problem which prevented him from being on his feet for more than four hours in an eight-hour workday.

[3] Dr. Collipp also mentioned a 2005 left ankle twist injury, but did not provide any further details.

Dr. Jeffcoat stated that appellant's June 14, 2007 work injury had resolved and that his feet problems were not related to the work injury, but rather to the severe bilateral pes planus. He noted that appellant had no neurological findings and indicated that his need for work restrictions was not related to any work-related left ankle injury.[4]

In a September 2, 2009 letter, the Office advised appellant of its proposed termination of his wage-loss compensation and medical benefits due to the fact that he no longer had residuals of his June 14, 2007 work injury. It noted that the termination was justified by the June 18, 2009 report of Dr. Jeffcoat and provided appellant 30 days to submit additional evidence to challenge the proposed termination.[5]

In a November 10, 2009 decision, the Office terminated appellant's wage-loss compensation for disability and medical benefits effective November 10, 2009 finding that he had no residuals of his June 14, 2007 work injury after that date.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act,[6] once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.[7] It may not terminate wage-loss compensation without establishing that the disability ceased or that it was no longer related to the employment.[8] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[9]

ANALYSIS

The Office accepted that on June 14, 2007 appellant sustained a left ankle sprain when his ankle gave way while walking and delivering mail at work. Appellant stopped work for various periods thereafter and received wage-loss compensation from the Office for periods of disability.[10] The Office terminated appellant's wage-loss compensation for disability and medical benefits effective November 10, 2009 on the grounds that he had no residuals of his June 14, 2007 employment injury after that date. It based its termination on a June 18, 2009

[4] Dr. Jeffcoat also stated that there was no sign of any injury sustained in 2005. Appellant asked about his right knee having a knot in it and Dr. Jeffcoat indicated that he probably had some degenerative changes in both knees related to age rather than a work-related cause.

[5] Appellant did not submit any evidence within the allotted period.

[6] 5 U.S.C. §§ 8101-8193.

[7] *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

[8] *Id.*

[9] *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

[10] The record makes reference to an incident in 2005 when appellant's left ankle gave way while he was lifting boxes at work. It is unclear whether this resulted in an accepted work injury.

report of Dr. Jeffcoat, a Board-certified orthopedic surgeon who served as an Office referral physician.

The Board finds that the weight of the medical evidence is represented by the thorough, well rationalized opinion of Dr. Jeffcoat. The June 18, 2009 report of Dr. Jeffcoat establishes that appellant had no residuals of his June 14, 2007 work injury after November 10, 2009.

Dr. Jeffcoat provided a history of appellant's left ankle and foot problems and described the June 14, 2007 work injury. On examination appellant was able to touch his toes easily, but when lying in the prone position and flexing his left knee without touching his left foot and ankle he complained of left ankle pain. Motor function and range of motion appeared normal in both the upper and lower extremities. Appellant had no calf atrophy and he walked in a very short and shuffling gait, which was felt to be secondary to decreased effort. Dr. Jeffcoat indicated that examination of appellant's left ankle revealed normal range of motion with about 15 degrees of dorsal flexion and about 60 degrees of plantar flexion bilaterally. Appellant had very supple feet bilaterally that did not give way and stress x-rays of his left ankle showed no movement on stretching the ankle and therefore revealed a very stable ankle. Dr. Jeffcoat concluded that appellant's June 14, 2007 left ankle sprain had resolved and that he had no residuals of a work-related injury.[11]

The Board has carefully reviewed the opinion of Dr. Jeffcoat and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Jeffcoat's opinion was based on a proper factual and medical history and accurately summarized the relevant medical evidence.[12] He provided medical rationale for his opinion by explaining that appellant had very severe congenital flat feet and a congenital valgus left hindfoot which were the cause of his instability. Dr. Jeffcoat saw no evidence of any ankle injury on the x-ray or examination and stated that the cause of appellant's feet problems had nothing to do with any type of injury he sustained. Appellant had a permanent problem which prevented him from being on his feet for more than four hours in an eight-hour workday, but these restrictions were not due to any work-related problem. Dr. Jeffcoat stated that the June 14, 2007 work injury had resolved and that there was no neurological evidence of such an injury. Appellant's feet problems were not related to the work injury, but rather to the severe bilateral pes planus and valgus left hindfoot.[13]

In a March 18, 2009 report, Dr. Collipp, an attending Board-certified physical medicine and rehabilitation physician, diagnosed chronic left ankle sprain. His report is of limited probative value as he did not provide medical rationale supporting such a diagnosis. Dr. Collipp reported essentially normal findings on examination of appellant's left ankle and he failed to

[11] Dr. Jeffcoat also stated that there was no sign of any injury sustained in 2005.

[12] *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

[13] The Board notes that further support for the Office's termination of wage-loss compensation is provided by a December 19, 2007 report of Dr. Shelton. He stated that appellant did not have a left ankle sprain and noted, "This is really not a work injury, but rather a developmental flatfoot with valgus hindfoot that causes impingement of the fibula on the talus and os calcis and peroneal tendon."

explain why his continuing problems were not solely related to his congenital left pes planus and valgus hindfoot.

For these reasons, the Office properly found that appellant ceased to have residuals of his June 14, 2007 work injury after November 10, 2009 and it met its burden of proof to terminate his wage-loss compensation.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation for disability and medical benefits effective November 10, 2009 on the grounds that there were no residuals of his June 14, 2007 employment injury after that date.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 10, 2009 decision is affirmed.

Issued: August 11, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board